IN RE ARBITRATION BETWEEN:

MINNESOTA PROFESSIONAL EMPLOYEES ASSOCIATION, MNPEA

and

BLUE EARTH COUNTY

DECISION AND AWARD OF ARBITRATOR

BMS CASE # 16-PN-0429

JEFFREY W. JACOBS

ARBITRATOR

September 30, 2016

IN RE ARBITRATION BETWEEN:

MNPEA

DECISION AND AWARD OF ARBITRATOR

and

BMS CASE # 16-PN-0429

Blue Earth County, Minnesota

APPEARANCES:

FOR THE UNION:

Joe Ditsch, Fowler and Ditsch, Attorney for MNPEA
Brian Shoemaker, Custody Sergeant
Darren Ewert, Union steward

FOR THE COUNTY:

Susan Hansen, Madden, Galanter and Hansen, attorney for the County
Robert Meyer, County Administrator

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. The Bureau of Mediation Services certified 12 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated January 7, 2016. Prior to the hearing the parties were able to resolve Issue #4, Health Insurance. No decision will be made as to that issue.

A hearing in the above matter was held on August 18, 2016 at the Blue Earth County Historic Courthouse in Mankato, Minnesota. The parties presented oral and documentary evidence at that time. The record was left open until August 25, 2016 to allow for updated information on wages at the hearing. The parties submitted post hearing briefs on September 9, 2016 at which time the hearing was considered closed.

ISSUES PRESENTED

The issues certified at impasse at the time of the hearing are as follows:[1]

1. Discipline - Article 10 – removal of reprimands
2. Work Schedules - Article 12 – break language

[1] These will not be addressed in this order given the parties presentations.

3. Vacation – Article 13 – eligibility for vacation upon separation of employment
4. Health insurance – RESOLVED by the parties prior to the hearing
5. Boot allowance- Article 17 – amount of allowance
6. Boot allowance – Article 17 – how frequently can employees request the allowance
7. Wages – Article 18 – general wage increase – (The parties agreed that there shall be a 2.5% general wage increase for 2016 and 2017. The remaining issue was over the increase for 2018, if any, depending on the ruling on duration.)
8. Wages – Article 18 – market increase
9. Shift differential – Article 18 – increase in shift differential
10. Duration of agreement – Article 25 – 2-year contract or a 3-year contract
11. FTO pay – NEW – Compensation for FTO training if any.
12. Hazard pay - NEW – Compensation for hazard pay if any.

WAGES – MARKET INCREASE

UNION'S POSITION:

The Union's final position was for a general increase in wages of 2.5% in 2016 and 2017 and, if a three-year contract is awarded, a 3.0% in 2018. The main dispute with respect to wages was over a requested market increase to address the turnover in the jail. The union requested for all affected bargaining unit employees, a 3.5% increase as a market adjustment in both 2016 and 2017 and a 2/0% market increase in 2018 – if a three-year contract is awarded. In support of its position the union made the following contentions:

1. The union asserted throughout much of the discussion on wages that there is an extraordinarily high rate of turnover within the unit. Within the last three years, the union noted that there has been a nearly 24% turnover rate of employees. Less than half of the current complement of employees have been with the County for more than two years.

2. The union asserted that this turnover rate is due in large measure to low wages paid in the jail and that people leave to find better paying positions either in the corrections field or in other sectors of the economy. This turnover rate places a high degree of stress on the remaining employees who have to continually train brand new employees and who may not have the experience or training necessary to deal with emergency situations within the jail.

3. The union countered the County's claim that the people who have left this unit have done so for "other reasons" and not due to low wages. While some have left for personal reasons, the union asserted that if the wages were higher many would stay for longer and not have to leave for better paying jobs either in other law enforcement capacities or to go to the private sector. No other unit within the County has even close to this level of turnover and the union further countered the claim, made by the County, that "jail employees do not remain in those positions for long," or words to that effect. The union rejected the County's claim that they researched other counties' jails and found a relatively high turnover rate there as well. The Counties contacted were not even in Region 9 nor was the County's "research' backed up by anything other than anecdotal evidence.

4. The union argued that the main reason people leave is due to not being able to make enough money to support themselves or their family with the wages paid in this unit. Thus, they leave for better paying jobs elsewhere, leaving the remaining employees to carry on with low morale, short staffed and sometimes with insufficient numbers of employees to perform their duties and keep staff and inmates safe.

5. The union also noted that while the Custody Officers' pay is near the market average, other Blue Earth County employee groups, such as the deputies, Chief Deputy, Sherriff and Administrator, are far above the market average. The union asserted that it is manifestly unfair to continue to pay these employees low wages, and thus contributing to the high turnover rate, while paying other county employees far above market average.

6. The union further asserted that the County Attorneys were able to show in Court that the County's methodology of calculating wages was arbitrary and capricious. See, *Arneson v Blue Earth County*, (Minn, Crt. App. unpublished decision August 11-, 2014). In that case the County attempted to simply apply the same wage settlements to the County Attorneys that applied to all other County employees.

7. The County Attorneys' appealed to the District Court which ruled that the County's approach to pay was inconsistent with PELRA. The Court further stated that "salaries should depend primarily on the duties of the office," which would include "counties with similar populations, similar numbers of employed assistant county attorneys, and counties facing similar amounts of crime." The Court of Appeals affirmed these rulings.

8. The union argued that the County's approach here is similar in that it relies on a so-called "internal pattern" of wage settlements and uses a "cookie cutter" approach to wages by asserting that all employees must be paid the same increase no matter their job description of their duties. The union argued that simply because one unit might not need a market increase does not mean that another unit, doing dissimilar work, with different duties, schedules and expectations of the position might not need one to address a specific concern – such as here where there is such a high degree of employee turnover. The union asserted that the County's position leads to this and was the exact sort of argument rejected by the Arneson Court. A more tailored approach is required under PELRA.

9. The union asserted that this is far too simplistic and, as the Court in Arneson held, wages must involve a more specific analysis of the internal and external comparisons as well as other factors. The union assailed the County's approach here as being inconsistent with the requirements of the statute as well as the holding in Arneson. The union also asserted that the historical pattern on which the County relied, going back several years and through several rounds of negotiation and interest arbitration, is deceptive and did not take into account the impact of the County Attorneys case. Thus, there is no internal pattern of settlements as the County would have the arbitrator believe.

10. The union noted that there is no dispute that the County has the ability to pay the requested increases. See, Union Exhibits 32 & 34, showing tax collection and other data and general economic data for Blue Earth County.

11. The union argued that the economy is strong, unemployment low and that the County's own data shows it is in a strong financial position with ample ability to pay these modest increases, including the market rate increases requested to address the attraction and retention/turnover problem discussed above.

12. Externally, the union asserted that Blue Earth County is by far the largest of the Region 9 counties and that there is no true comparison given the large difference in size. The union however recognized that despite continued efforts to change the comparison group no interest award has done so, nor have they been successful in doing so through negotiations. Still though the differences are, in the union's eyes, palpable, and should be taken into account here.

13. The union seeks to increase the pay so that employees will remain in these positions longer. The County should be required to pay their employees enough to incent them to stay rather than to use this job as a mere stepping stone to other positions or as a temporary interim job until something better comes along.

The union's request is thus for a market increase calculated to the comparative wage of the licensed deputies in Blue Earth County. The union recognized that few, if any, interest arbitrators have awarded such an increase in recent years but that this is a most unique situation that cries out for an adjustment to address and begging to correct this chronic problem.

COUNTY'S POSITION

The County's final position was for no market increase as requested by the union and for a 2-year contract, discussed more below, and therefore no decision on 2018 wage issues. In support of this position the County made the following contentions:

1. The County asserted that there is and has been a strong pattern of internal consistency with all of its bargaining units and that this case presented a very similar scenario. The 2.5% increase of 2016 and 2017 is identical to the wage increases offered and accepted by other bargaining units.

2. The County countered the claim that these settlements were cookie cutter but rather were voluntary negotiated settlements reached after good faith collective bargaining and reflect a fair settlement of wage issues for these years within the County. The County also argued that there has always been a strong policy favoring internal consistency in interest arbitrations in Minnesota.

3. Further, the County Attorney matter referenced by the union reflected a very different set of circumstances and a different underlying set of statutory rights granted to those unique employees. Further, while the County Attorneys were successful in their appeal in 2014, that unit has not settled yet for 2016 or 2017 and should not be used as a basis for granting the increases the union seeks here.

4. The County noted that the underlying and fundamental principle in interest arbitration is that the arbitration process should reflect what the parties would have negotiated through the collective bargaining process had they been able to negotiate it themselves. Thus the voluntary settlements reached with the other bargaining units at the County are strong evidence of what these parties themselves would have agreed to if they negotiated to voluntary resolution. To award a different wage package than what other bargaining units received as a result of negotiated settlements would encourage whipsawing and would undermine the other fundamental principle of PELRA, which is to encourage harmonious and voluntary settlements of labor agreements. Granting a market increase would be both highly unusual – no other arbitrator has done so for many years – and would encourage other units in the County to deviate from the internal pattern and create considerable disharmony within and between employee groups.

5. The County also asserted that the request for a market increase and hazard pay, discussed more below, is nothing more than a thinly veiled attempt to reclassify these bargaining unit employees. The County asserted that there is no jurisdiction to do that and that this award would be contrary to PELRA.

6. The County defended its pay system and noted that it did in fact take into account the duties and hazards of the position inherent in jail work. These positions were appropriately rated and evaluated and those findings are beyond the scope of this arbitration. There were no deviations from the internal pattern of 2.5% settlements and no reason to deviate from that pattern for this unit. The County submitted several prior awards from other arbitrators who have ruled on interest cases from Blue Earth County all of which have recognized and adopted the internal patterns approach to bargaining. See, *County of Blue Earth and AFSCME Council 65*, BMS Case No. 12-PN-0334 (Miller, 2012) and *County of Blue Earth and MNPEA*, BMS Case No. 14-PN- 0203 (Miller, 2014). In both those cases Arbitrator Miller ruled that internal equity "overwhelmingly" supported the County's position regarding the appropriate wage settlement. The evidence here was almost identical to that faced by Arbitrator Miller in the two cases cited above.

7. Likewise, Arbitrator Miller rejected a similar claim regarding the County Attorney matter in the 2014 case between these two parties. In doing so he noted that the statutory process for a salary appeal for the attorney group is different and did not control the decision on the MNPEA group.

8. The County also cited numerous cases upholding the inclusion of Blue Earth County in Region 9 and asserted that any claim that Blue Earth should be compared to other counties must be rejected.

9. The primary focus of the County, as it was for the union, was attrition and turnover within this unit. The County recognized the degree of turnover as well but had a very different position as to why there was that rate of employee turnover. The County argued that such turnover within jail and correctional units is not uncommon and that many people start their law enforcement careers in a jail but then use that as a stepping stone to other positions, such as licensed deputy. The County asserted that this has been occurring here.

10. The County further went through in some detail the reasons given by those employees who have recently left the jail for other jobs and noted that few if any cited low wages as the main reason, or even a reason at all. Many left due to the commute, or that they found a law enforcement licensed position or that they simply did not like the job duties and working with inmates – i.e. the job just was not for them. Some even left due to disciplinary issues. Few if any leave to work in a correction facility elsewhere or to get an increase in salary in a similar position. The evidence is thus that the wages are competitive and that the turnover is due to entirely different reasons from what the union asserts it is.

11. The County pointed out that the employee retention issue is a management issue, not an issue for the union. Further, there are ample numbers of applicants whenever a new position opens up – sometimes many more. This should be a signal that the wages are not an issue and that people who wish to pursue a career in criminal justice or law enforcement start work in a similar position. There is thus no support for the union's position for a market increase.

12. Moreover, the County pointed to external comparisons in support of its wage proposals and asserted that Blue Earth's 2.5% wage proposal for 2016 and 2017 is actually slightly above the average for the Region 9 Group, which is approximately 2.0%.

The County argues that there is thus no justification for a market increase in this matter

DISCUSSION

As noted above there was agreement that the 2.5% general increase was appropriate for 2016 and 2017. Accordingly, no further discussion is warranted on that question.

The main issue between these parties was whether a market increase adjustment was appropriate based in large measure on the employee turnover in the Blue Earth correctional facility over the past several years.

ATTRITION AND TURNOVER ISSUES

First, there was no question that there is high turnover. The evidence showed that nearly half of the employees there currently have been there for less than 2 years. Some had even left in the few weeks prior to the hearing who had been hired as recently as the spring of 2016. There was further no question that the turnover has been an issue before and places additional work on the remaining employees whenever people leave – sometimes with very little notice.

The essential question here though is whether the turnover is related to low wages, as the union asserted, or, as the County asserted, related to a number of other factors unrelated to wages. On this record there was insufficient evidence to demonstrates that the reason so many employees leave was related exclusively to wages. There was clear evidence that whenever a position is posted, there are more applicants than positions open. This leads to a conclusion that for whatever reason, people apply for these jobs, irrespective of the wages paid.

Second, there was evidence to show that those who left did so for a variety of reasons, from the commute, to getting a different sort of job entirely to family issues. Taking a different job in the private or public sector could be a sign that the wages were too low but on this record, there was insufficient evidence to conclude that this was the main reason or even a reason for any particular employee to leave this job. Some employees in fact did go to a licensed deputy position, thus supporting the County's claim that jail positions can be regarded in some cases as entry level to "get one's foot in the door" to pursue a law enforcement career.

Finally, there was very little, if any, evidence that employees left to take lateral positions in other nearby counties in a jail position. There are not leaving Blue Earth County to work in another county's jail. Nor was there sufficient evidence to show that those who have left did so for better pay in a similar position elsewhere.

This was significant in that without that evidence, what can be said at best is that people leave. Without solid evidence that they are leaving due to low wages, or that insufficient numbers of applicants are applying for the vacant positions, it cannot be said that there is a compelling need for a market adjustment.

That conclusion, coupled with the clear factor that few if any, interest arbitrations in recent years have awarded market increases, lead to the result in favor of the County on this question.

Moreover, while that conclusion essentially determines the issue, some brief discussion of the other matters brought up by the parties should be addressed.

THE PRIOR COUNTY ATTORNEY MATTER

The union asserted that the County's claim of an internal pattern governing the results should be rejected due to the Arneson case cited above. Arbitrator Miller was faced with what appeared to be this same argument in 2014. He noted that the statute, Minn. Stat 388.18 requires a very different analysis and process to that presented here. He noted the Arneson decisions in both the District Court and Court of Appeals but further pointed out that the standards utilized in elected officials' salary and budget appeals under Minn. Stat 388.18 are not applicable in this type of proceeding. Slip op at page 19. He very eloquently and accurately pointed out in his 2014 decision between these parties that, "there are no known interest arbitrators that have adhered to the standards utilized under Minn. Stat. 388.18 … in any essential employee interest arbitration case." Id.

There was insufficient evidence presented on this record to compel a deviation from that adherence.

INTERNAL AND EXTERNAL COMPARISONS

There was no internal factor presented sufficient to compel a market increase here. The union argued that the simplistic approach applied by the County demonstrated an arbitrary adherence to a one size fits all increase irrespective of the unique factors. The evidence did not support this view.

First, the factors differentiating one position from another, for example a law enforcement job from a public works or assessing job, are already taken into account in the wage calculations anyway and in the County's overall pay system depending on their duties and the requirements of the position. There was ample evidence on this record to support the County's pay system and no jurisdiction for an interest arbitrator to upset or amend that.

Further, and perhaps most significantly, the internal pattern demonstrated on this record was based on other voluntary settlements reached between the county and other bargaining units. While those do not control in an absolute sense in all cases, such a pattern is very strong evidence of what the parties would have been able to negotiate at the bargaining table – since that is what other units were able to negotiate.

Externally there was evidence that the wage proposal was competitive and was slightly above comparable Region 9 counties. External comparisons of wages are both necessary and appropriate in interest cases. Otherwise, an employer could simply adhere to what it paid the nonunion employees and continue to argue that was the internal pattern, thus undercutting the whole purpose behind collective bargaining. That however was not what was shown to have occurred here. Further, there was some support for the county's claim that allowing a market increase for this unit might well result in "whipsawing" or "me too' bargaining, this creating disharmony among the counties employee's groups.

ABILITY TO PAY

There was no question that the County has the ability to pay the union's requested increases. "Can" must not always be equated with "should" however. The question as discussed above, is whether there is sufficient showing of a need for the requested wage increases based on the factors traditionally used by interest arbitrators. Here, even though there is ample money to pay these increases, there was insufficient evidence to support the union's claimed market increase.

In this regard, the comments by Arbitrator Johnson in *County of Dakota and Law Enforcement Labor Services, Inc.*, BMS Case No. 13-PN-0089 (Johnson, 2013), slip op at 7, applied here. He stated as follows:

> Both the Union and the Employer make valid points. The County is in good financial shape. But it is in that condition because it has exercised financial prudence, and it continues to do so. While the County does, in my judgment, have the ability to pay the cost of this bargaining unit's proposals on wages and merit pay, it does not necessarily follow that the Union's proposals should be implemented. This would, in effect penalize the County for its responsible financial management. Also, awarding the Union's proposal would encourage those bargaining units not yet settled for 2012 and 2013 to seek too equal or exceed the result for this bargaining unit, creating a ripple effect that would increase the County's ongoing personnel costs over time.

Those comments could well be applied here as well.

AWARD ON WAGES AND MARKET INCREASE

The County's position is awarded on market increase. As noted above, the parties agreed to a 2.5% general pay increase for 2016 and 2017.

HAZARD PAY

UNION POSITION

The Union proposal was as follows: A premium of 1.0% shall be added to the base wages of all employees required to work with inmates as Hazard Pay. In support of this position the union made the following contentions:

1. The union stated its preference for the market increase instead of the hazard pay but noted that given the high employee turnover and the size of the jail in Blue Earth County and the nature of the inmates there, some hazard pay might be appropriate.

2. The union recognized that hazard pay is a "relic of the Fox Lawson DBM wage system" and that few counties adopted it but that Blue Earth still retained the DBM grid but without hazard pay.

3. Some counties in Region 9 do still pay hazard pay however and Blue Earth County, as the largest of those counties, should be required to pay it as well.

COUNTY POSITION

The County's position was for no hazard pay. In support of this the County made the following contentions:

1. The County's argument with regard to hazard pay was combined with its position on the market increase. The County noted that such pay would be a new wage, for which there was no showing of a compelling need nor a quid pro quo by the union.

2. The County also asserted that the inherent hazards of this position is already taken into account when determining the appropriate pay grade, i.e. 23 for the Custody Officer and 32 for the Custody Sergeants. Thus, the employees have already been compensated for the hazards of the position.

DISCUSSION OF HAZARD PAY

The determination of this issue was to a large degree based on the discussion of the market increase above. The basis for it appears to be similar as well. The evidence in this matter showed that the hazards of the job, inherent in the nature of jail work, have been taken into account and compensated through the pay system. Further, there is no jurisdiction to alter or amend the County's pay system through this process.

Accordingly, there was insufficient evidence upon which to base an award of hazard pay on this record.

AWARD ON HAZARD PAY

The County's position is awarded. No hazard pay is awarded.

DURATION OF CONTRACT- WAGES FOR 2018

UNION POSITION

The union seeks a three-year contract. The union noted that the County already has two-year contracts with the Courthouse/AFSCME unit and the Human Services/AFSCME unit and a three-year contract with the Teamsters #320 probation officers. The arbitrator thus has the power to award a three-year contact and to award the 3.0% increase the union seeks here

COUNTY'S POSITION

The County seeks a two-year contract and argued that there is a lack of sufficient comparison data for 2018. Few, if any, of the other counties have settled with their units for 2018. There is thus a paucity of evidence on which to base an interest award especially given the fundamental principle of attempting to arrive at an award based on what the parties would have negotiated had they been able to reach settlement.

Further, the County has seven other bargaining units and only the unit of 20 Probation Officers represented by Teamsters 320 are settled through 2018 with a 2.0% general wage adjustment that year. See, Employer Exhibits 9 and 27. Of the eight other counties in Region 9, only one is settled for 2018. See, Employer Exhibit 52. Thus there is simply insufficient evidence to make an award for 2018.

DISCUSSION OF DURATION AND WAGES FOR 2018

On this record the County's position has greater merit. Only one of the internal units, and a relatively small one at that, has settled for 2018, and that was for a 2.0% increase. Only Sibley County has settled for 2018 out of the remaining Region 9 counties – and that also was for a 2.0% increase. See Employer exhibit 52. On this record, without more evidence of internal or external settlements, the duration should be for a two-year contract and no decision on wages for 2018. That is left for the parties and the negotiation/arbitration process to determine.

AWARD ON DURATION AND WAGES FOR 2018

A two-year contract is awarded. No decision is made with regard to wages for 2018.

DISCIPLINE – ARTICLE 10.3

UNION POSITION

The union seeks no change in the current language and puts the County to its strict proof to provide a compelling reason for its proposed changes.

The union noted that the County offered no compelling reason for this change nor did it offer anything in exchange for this substantial change in language. Further, after three years most reprimands hold very little weight with most arbitrators anyway as they are by that time dated and old. The union characterized the County's request as simply one which they "don't like," but for which they are prepared to offer nothing in order to change.

Finally, the union noted that removal provisions like this are common in many public and private sector labor agreements and it should remain as a procedural protection for employees against arbitrary actions by the employer or attempts to drag up very old and dated issues from the past.

COUNTY POSITION

The County seeks a change in the existing language of Article 10 as follows:

Current language:

10.3 Written reprimands, notices of suspensions, and notices of discharge to become part of the employee's personnel file shall be read and acknowledged by signature of the employee. If the employee refuses or fails to read and sign the notice, this shall be duly noted on the form by a union steward. The employee will receive a copy of such reprimand or notices. Written reprimands are to be removed after three (3) years if there are no same or similar incidents during that period.

Proposed language:

10.3 Written reprimands, notices of suspensions, and notices of discharge to become part of the employee's personnel file shall be read and acknowledged by signature of the employee. If the employee refuses or fails to read and sign the notice, this shall be duly noted on the form by a union steward. The employee will receive a copy of such reprimand or notices. ~~Written reprimands are to be removed after three (3) years if there are no same or similar incidents during that period.~~ (Delete last sentence).

The County argued that it needs this in order to hold employees accountable for a history of improper behavior. The County wants the deletion of the final sentence, calling for the removal of reprimands in order to provide proof in subsequent disciplinary or arbitration proceedings involving new disciplinary matters that the employee was aware of County's notice with regard to that behavior or conduct. If the discipline is removed, the County can maintain the data as the Union suggests, but will be precluded from introducing the reprimand in a subsequent grievance arbitration proceeding.

DISCUSSION OF DISCIPLINE ISSUES – ARTICLE 10.3

Here the union's arguments prevail. There was an insufficent showing of a compelling need for this provision. The County provided insufficient evidence of a problem with employee discipline or that old reprimands that were germane were not allowed to be used in order to alleviate some sort of chronic employee misconduct issues.

Further, somewhat ironically, the evidence showed that a great many employees do not stay with the County for more than 3 years anyway, so this provision may well be moot in many cases. More to the point though there was neither a showing of compelling need to alleviate problems nor a showing of any quid pro quo offered in exchange for this provision's amendment.

Finally, there appears to be some inconsistency internally on this question. See Employer Exhibit 83, showing that the Teamsters agreement calls for such reprimands to be removed after 5 years. While many of the other internal County units do not have removal provisions, there was insufficient evidence as to why that is the case or whether there were problems in those units calling for the removal provisions to be deleted; or that they were ever there to begin with. Without more, the County's requested change in language cannot be granted.

Accordingly, on this record the union's position is awarded.

AWARD ON DISCIPLINE -ARTICLE 10.3

The union's position is awarded. No change in existing language.

VACATION – ARTICLE 13.7

UNION POSITION

The union's position was for no change in existing language and put the County to its strict proof to provide a compelling need for or a quid pro quo in exchange of the requested change in language. The union characterized the proposed language as a penalty i.e., for termination for misconduct, and argued that it provides an incentive for the County to claim misconduct, even where that might not be the case in order to avoid paying a benefit the employee has earned under the labor agreement.

The union further asserted that the accrued benefit is something the County must pay under applicable law, Minn. Stat. 181.74. The union argued that there was no showing of a compelling need for this language nor anything offered for it in exchange for the employees giving up an earned and valuable benefit.

COUNTY POSITION

The County seeks a change in Article 13.7 as follows:

Current language:

> 13.7 Upon termination of or retirement from employment, an employee shall receive payment for all vacation accumulated as of the date of said termination or retirement. In cases of voluntary separation by an employee, not less than two weeks (2) weeks' notice of separation shall be given the Employer to be eligible for payment of accumulated vacation pay. Upon failure thereof, such time shall be forfeited.

Proposed language: (amends 13.7 and adds a new 13.8):

> 13.7 Upon termination of or retirement from employment, an employee shall receive payment for all vacation accumulated as of the date of said termination or retirement. ~~In cases of voluntary separation by an employee, not less than two weeks (2) weeks' notice of separation shall be given the Employer to be eligible for payment of accumulated vacation pay. Upon failure thereof, such time shall be forfeited.~~
>
> 13.8 Any regular full-time employee leaving employment with the County shall be compensated for vacation leave accrued to the day of separation at the employee's last full-time pay rate, provided the following:

A. Must give at least two (2) weeks' notice in writing of termination of employment; and

B. Must not be terminated due to misconduct.

Otherwise, an employee will not be eligible for payment of earned but unused vacation, unless required by state law.

The County asserted that this language is needed in order to provide payment of accrued vacation only to those employees who leave in good standing at the time they separate employment from the County. Otherwise the County could be forced to pay the existing benefit to employees who leave in something other than good standing.

The County countered the claim by the union that the new language will provide an incentive to terminate people. They only claimed that this was simply not true and provided at least one example of an employee who was allowed to leave and who was paid vacation under this provision even though there were issues with his employment at the time he left.

The County asserted that there is no evidence it would abuse this provision or that it would seek to terminate an otherwise good employee by trumping up a charge of misconduct in order to avoid payment of earned vacation. The County asserted that all it seeks is to assure that only those employees who leave in good standing shall receive accrued vacation.

DISCUSSION OF VACATION - ARTICLE 13.7 AND PROPOSED 13.8

Here too the union's argument prevailed. There was an insufficient showing of a compelling need for this change nor any offer in exchange made for the employees to give up this benefit. Further, while the County asserted that it had no present plans to use or abuse this provision by fabricating a charge of misconduct such a provision could potentially be used in that fashion, perhaps not now but in the future. That later fact was not controlling, because the underlying presumption in all of labor relations is that people negotiate and deal with each other in good faith unless there is compelling evidence to the contrary. Here there was no such evidence to be sure but the question of whether there was a need for this change controls this discussion.

On this record there was an insufficient showing of a compelling need for this nor any evidence that employees have abused this provision. Simply stated, without a compelling showing of need or an offer in exchange for this, the union's position prevails.

AWARD ON VACATION – ARTICLE 13.7 AND PROPOSED 13.8

The union's position prevails. No change in existing language.

BOOT ALLOWANCE - ARTICLE 17.1 – (Certified issues #'s 5 and 6)

UNION POSITION

The union sought a change in the existing language of Article 17.1, which currently provides that employees will be "reimbursed up to one hundred seventy-five ($175.00 dollar annually for boots" to "$200.00 annually for up to two pairs of boots."

The union seeks this change in order to take account of the rising cost of boots and the fact that these employees use their boots at work all the time and that they frequently wear out, requiring the employees to buy new boots more than once per year. The union noted that these employees walk virtually all day and need to either buy a better quality pair of boots that will last the full year or in the alternative, buy a somewhat lesser quality pair but be able to purchase more than one pair per year. Moreover, many employees need to have different boots for different seasons, i.e. one for the winter months and another for warmer times of the year. The union argued that there is a compelling need for this increase and for the allowance of the employees to be able to buy more than one pair per year within the allowance.

The union also distinguished the type of work these employees perform from their other units. The deputies do not walk anywhere near as much as these employees do and in fact spend much of their work hours in vehicles.

The union also noted that the current $175.00 annual allowance has been in place without any increase since 2013 and that a marginal $25.00 annual increase is both reasonable and will have minimal cost impact on the County or its overall budget.

COUNTY POSITION

The County's position was for no change in the existing language or payment of the boot allowance.

The County pointed out that no other unit within Blue Earth County receives a similar allowance for boots, including the licensed deputies. The County also provided a time line of the history of boot allowances in the County, See Employer Exhibit 95, and showed that there has been no compelling need to change the amount. Neither has there been a need for employees to purchase more than one pair of boots per year.

The County turned to external comparisons and noted, See Employer Exhibit 96, that the vast majority of the Region 9 counties have no provision for boots at all. Martin county has a provision for an initial uniform which includes a pair of boots but it is vastly different from what the union currently has or what it is proposing. The County argued for no change in the existing language.

DISCUSSION OF BOOT ALLOWANCE – ARTICLE 17.1

The union's arguments prevailed on this matter on both counts. Significant in this discussion is that the allowance has not changed since 2013. Further, even though no other county employee groups have a boot allowance, there was some evidence that these employees are somewhat different. With the possible exception of the highway employees represented by a different union, there was no evidence that any other employee group uses boots at work in a similar way.

The evidence presented by the union on this record showed that there was more of a compelling need for the boots and to increase the allowance in order to provide for the wear and tear. On that score the union's evidence on the increase in the amount was persuasive.

On the question of whether the language should change to allow to up to two pair, there was persuasive evidence on this as well. The employees will have to submit receipts to be reimbursed. Whether there are two pairs or one does not materially alter the amount the county would have to pay. An employee could certainly spend up to $175.00 or even $200.00 on a pair of boots now.

Whether that same employee would spend $100.00 on a pair and then later another $100.00 on a second pair would not alter the County's financial obligation. Accordingly, on this unique record, the union's position will be awarded.

AWARD ON BOOT ALLOWANCE ARTICLE 17.1

The union's position is awarded on both issues as discussed above.

SHIFT DIFFERENTIAL – ARTICLE 18

UNION POSITION

The Union proposes to increase the shift differential from $0.25 per hour to $0.35 per hour in 2016 and $0.45 per hour in 2017. Current language provides for a shift differential of $.25 per hour for all hours worked between 5:00 p.m. and 5:00 a.m.

The union noted that the shift differential was a benefit granted in the last interest arbitration between these parties in 2014, see *County of Blue Earth and MNPEA*, BMS Case No. 14-PN- 0203 (Miller, 2014). The union noted that while the current $.25 per hour differential is on average with the rest of the Region 9 counties some counties receive a far higher differential. Given that Blue Earth is by far the largest county in Region 9 the union asserted that Blue Earth should be above average in this regard. The union also noted though that the Region 9 average for shift differential pay is well below the state average and seeks a slow and steady increase to keep pace with the prevailing market.

COUNTY POSITION

The County's position was for no increase in shift differential. The County argued that this new benefit was granted only for the first time in the 2014 arbitration by Arbitrator Miller. The County asserted that there is no need for this change and that the union presented no compelling evidence for this increase.

The County further argued that the only other unit with shift differential is the dispatchers who also have the same shift differential. To award the requested increase will likely result in a similar request from the dispatchers for a similar increase.

DISCUSSION OF SHIFT DIFFERENTIAL – ARTICLE 18

The shift differential was initially granted by Arbitrator Miller in his 2014 decision. His rationale for granting what was at the time a new benefit was that the "trend" in comparable counties since 2009 was to grant shift differential and that at the time of his award the vast majority of the surrounding counties had this benefit. He also noted that the $0.25 differential awarded was at the lower end of the comparable counties but that it "simply represents a floor in which the parties can negotiate higher amounts in successor contracts." Slip op at page 26-27.

A review of the comparable counties shows that four of the Region 9 counties do not provide shift differential. Brown County provides a $1.00 differential, LeSueur County provides a $.30 per hour differential, Martin County provides a $0.50 per hour differential and Waseca County a $0.30 during certain hours and a $0.10 per hour during other hours. See Employer Exhibit 99.

Much of Arbitrator Miller's rationale holds true here. It was apparent that he set the differential at the lower end and allowed the parties to negotiate higher amounts later. That is what the union is attempting to do here. Moreover, the average of the counties in Region 9 that do provide for shift differential is far higher than $0.25 per hour. There was support for an increase as the union suggested, especially given the relative size, tax base and population of Blue Earth County as compared to other Region 9 counties.

The County asserted that granting this benefit will result in whipsawing and that the dispatchers and deputies will certainly want this benefit. It was noted that only the dispatchers, represented by Teamsters #320 have a shift differential now and the deputies do not. See Employer Exhibit 98. It would be speculative to assume that the deputies will get this benefit since they do not have it now. While the dispatchers may want it too, that also is for those parties to negotiate. There are certainly differences in the type of work performed by these various employees which may well form the basis of those negotiations. The mere fact that other units may want a similar benefit is not on its own a sufficient basis for denying it if there is sufficient evidence based on the relevant factors to grant it.

On this record, for many of the same reasons cited by arbitrator Miller in his 2014 award, the union has provided a compelling reason for an increase in shift differential.

The remaining question is at what level. The requested increase for 2016 is both reasonable and appropriate for this unit. Likewise, the increase to $0.45 per hour for 2017 is also well in line with comparable Region 9 counties. As noted at least two of the comparable counties have shift differentials above that level now. It was not known on this record if those counties and their employee groups have increased the differential in those counties for 2016 or 2017 so the current levels provided for at Employer Exhibit 98 were used for comparison.

On this record, the union has provided compelling evidence of a need for an increase for the shift differential in 2016 and 2017. As noted above, the duration of this contract will be 2 years so 2018 is not at issue in this matter.

AWARD OF SHIFT DIFFERENTIAL FOR 2016 AND 2017 – ARTICLE 18

The union's position is awarded. Article 18 to be amended to provide for a $.35 per hour shift differential for 2016 and $0.45 shift differential for 2017.

WORK SCHEDULES – BREAKS – ARTICLE 12.6

UNION POSITION

Current language:

12.6 Employees will be allowed a fifteen (15) minute paid break for every four (4) hour work period worked, as long as they are available to work. If the employee leaves the work area, they must take a portable radio with them so as to be able to respond quickly to any emergency.

Proposed language

12.6. Employees will be allowed <u>two (2) fifteen (15) minute paid breaks and one (1) thirty (30) minute paid break during each shift worked,</u> ~~a fifteen (15) minute paid break for every four (4) hour work period worked~~ as long as they are available to work. If the employee leaves the work area, they must take a portable radio with them so as to be able to respond quickly to any emergency.

The union argued that this change is needed to accommodate lunch breaks. Fifteen minutes is simply not enough time to leave one's post, get lunch, eat, and return to the post. Further, while 15 minutes is sufficient to use the restroom three times in a 12-hour shift, it is not enough time to eat lunch. As a result, the officers eat lunch at their posts.

The union countered the County's concerns on this issue and noted that the County retains the right to call a person back in emergencies and that the officers must still have their radios with them so the County can contact them. The union acknowledged that this change would necessitate operational changes and require a person to cover the 30-minute break but asserted that this would be a safer option and provide adequate coverage to supervise the inmates.

COUNTY POSITION

The County's position is for no change in the current language. The County asserted that this provision is historical and has been part of the understanding for many years. The County asserted that the union provided no compelling reason for the change other than perhaps employee convenience.

Further, the change proposed by the union would necessitate an additional staff person to provide coverage. That too would entail additional cost and would also entail operational difficulties. See Employer Exhibit 86. The County argued that there is no particular problem and that it has been lenient with break times to allow people to eat meals and do other necessary tasks.

DISCUSSION OF WORK SCHEDULES – ARTICLE 12.6

The County's arguments in this matter prevailed. There was an insufficient showing of a compelling need for this change. Further, the County provided evidence that this would create operational issues as well as create additional expense.

The union provided evidence that the 15 minute breaks can make it difficult to eat a full meal in that time. However, as the County pointed out in its evidence and argument here, there was insufficient evidence of any alteration in the employees' ability to take breaks have changed over time. This topic is thus left for the parties to negotiate in subsequent bargaining and is not ripe for a change through interest arbitration at this time.

AWARD ON WORK SCHEDULES – BREAKS – ARTICLE 12.6

The County's position is awarded; no change in existing language.

FIELD TRAINING OFFICER, FTO, PAY – NEW ARTICLE

UNION POSITION

The Union proposes new language as follows:

> Employees designated by the employer as Field Training Officers shall receive three (3) hours of comp time (calculated at straight time) for every 12 hours spent training other employees. The Employee will have the option of taking the time off or receiving the straight time cash equivalent.

This topic is closely tied to the turnover issue raised above and the union argued that ongoing training for all the new employees is a constant issue. The union pointed to the licensed deputies and the dispatchers and asserted that it seeks the same benefit the County already provides to the two other law enforcement bargaining units. See, Employer Exhibit 104. Deputies and Dispatchers already receive 10 hours of Compensatory Time for every 40 hours of FTO training. That is a 1:4 ratio of benefit to work hours.

The union noted that one of the problems is that new employees rarely are assigned the same training officer for successive shifts and are frequently passed around depending on who is on duty to train them. The union introduced testimony regarding this issue and asserted that officers who serve in FTO roles are frequently called upon to train new employees and that the union seeks to provide compensation for the amount of time and effort they spend doing this – especially since it is done so frequently given the extraordinary high rate of employee turnover.

The union indicated that it would accept the same language as exists in the deputies' and dispatchers' contracts as long as it provides for a pro rata method of compensation, keeping in mind that Custody Officers work 12-hour shifts.

COUNTY POSITION

The County was opposed to any additional language and took the position that no change should be awarded.

The County asserted that new employees in the jail are assigned to either a Sergeant or an FTO for training. New employees do not work with that Sergeant or FTO throughout an entire shift however so they can learn tasks at other posts. As a result, what works in the jail is for new employees to be assigned to various FTO's and various posts throughout a shift. Thus, they work with a variety of different FTO's throughout a 12-hour shift. Employer Exhibit 102.

The Union's proposed language is vague, ambiguous and could lead to grievances. The County further argued that it is unclear if the Union's proposed three hours of comp time would accrue after 12 consecutive hours spent training or 12 cumulative hours spent training. The County asserted too that the training regimen in the other law enforcement units is very different from that which occurs in the jail and that those officers are assigned one FTO for a 40-hour block of time. The union's requested change might also create operational difficulties and should be rejected.

DISCUSSION OF FTO PAY – NEW ARTICLE

This was a somewhat more difficult issue to determine than it at first appeared. The deputies and dispatchers have provisions in their respective agreements for FTO pay. See Employer Exhibit 104.

The evidence on this record however showed that the training for those other two units is indeed different from the way training is assigned in the jail. See, e.g. Employer Exhibit 102. There was some evidence that creating this new benefit could well result in confusion as well as operational issues.

While there was certainly evidence of high turnover, as discussed at some length above, and that the new employees must be trained. The evidence on this issue fell short of providing the necessary showing of a compelling need to create new language and thus a new benefit.

This again is an issue ripe for future discussion though between these parties to gain some further clarity on how the FTO training pay would work and is left for the parties to negotiate in future rounds of bargaining.

AWARD ON FTO PAY

The County's position is awarded. No change in language.

SUMMARY OF AWARD

AWARD ON WAGES AND MARKET INCREASE

The County's position is awarded on market increase. As noted above, the parties agreed to a 2.5% general pay increase for 2016 and 2017.

AWARD ON DURATION AND WAGES FOR 2018

A two-year contract is awarded. No decision is made with regard to wages for 2018.

AWARD ON HAZARD PAY

The County's position is awarded. No hazard pay is awarded.

AWARD ON DURATION AND WAGES FOR 2018

A two-year contract is awarded. No decision is made with regard to wages for 2018.

AWARD ON DISCIPLINE -ARTICLE 10.3

The union's position is awarded. No change in existing language.

AWARD ON VACATION – ARTICLE 13.7 AND PROPOSED 13.8

The union's position prevails. No change in existing language.

AWARD ON BOOT ALLOWANCE ARTICLE 17.1

The union's position is awarded on both issues as discussed above.

AWARD OF SHIFT DIFFERENTIAL FOR 2016 AND 2017 – ARTICLE 18

The union's position is awarded. Article 18 to be amended to provide for a $.35 per hour shift differential for 2016 and $0.45 shift differential for 2017.

AWARD ON WORK SCHEDULES – BREAKS – ARTICLE 12.6

The County's position is awarded; no change in existing language.

AWARD ON FTO PAY

The County's position is awarded. No change in language.

Dated: September 30, 2016

_____

Jeffrey W. Jacobs, arbitrator